



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

962441

REPLY TO THE ATTENTION OF: **C-14J**

March 5, 2012

**CONFIDENTIAL SETTLEMENT COMMUNICATION
SUBJECT TO F.R.E. 408**

Joseph D. Lonardo
Vorys, Sater, Seymour and Pease LLP
1909 K Street NW
Suite 900
Washington, D.C. 20006-1152

RE: Trinity Superfund Site (Cleveland, Ohio)
Settlement Agreement for Recovery of Past Costs

Dear Mr. Lonardo:

Thank you for your letter dated February 21, 2012. The United States Environmental Protection Agency ("EPA" or "Agency") case team is pleased to have reached a preliminary agreement with the Standex International Corporation ("Standex") that we can recommend to EPA and Department of Justice ("DOJ") management. The EPA case team will now send the Settlement Agreement for Recovery of Past Costs ("Settlement Agreement") for preliminary approval by the appropriate persons at both EPA and DOJ. Once we have that approval, we will send you a copy and request a signature of the Settlement Agreement by Standex. The Settlement Agreement will then be sent for final approval by the appropriate persons at both EPA and DOJ. The settlement is also subject to public comment.

In addition, while EPA believes that your February 21 letter largely captured our discussion on February 16, one point in particular does require clarification. This relates to paragraph 18, entitled "Covenants by EPA". In your letter you state:

It is the position of USEPA Region 5 and the Department of Justice that there is no necessity for any additional release under a federal statute as the claim for Past Response Costs would be brought under CERCLA. Additionally, upon your review of the Ohio Statutes relating to voluntary action and recovery of response costs for environmental contamination, it is your view that these statutes do not give rise to a right in USEPA to recover its past response costs for which there needs to be a release.


What we meant to convey to you on the February 16 call was that for purposes of the Trinity past cost Settlement Agreement only, EPA and DOJ staff reviewed Title 37, Section 3746 (Voluntary Action Program or VAP) and Title 37, Section 3734 (Solid and Hazardous Wastes) – along with their implementing regulations. After this review, EPA and DOJ staff was unable to locate a provision in the laws or regulations under which the “Past Response Costs” under the Trinity Settlement Agreement could be recovered by EPA. We hope that this clarification is helpful. Also, please note that the Settlement Agreement provides for a covenant not to sue, as opposed to a release. See Section VII (Covenants by EPA).

Notwithstanding the above, as provided in Section XIV (Integration/Appendices) of the proposed Settlement Agreement, the Agreement is “the final, complete, and exclusive agreement and understanding among the Parties,” and “there are no representations, agreements, or understandings relating to the” settlement outside of the Settlement Agreement itself.

Finally, EPA notes that the February 16 call and your February 21 letter are confidential settlement communications and are subject to Federal Rule of Evidence 408.

Please contact me immediately if you have any concerns or questions regarding this letter. I can be reached at (312) 886-5825. EPA expects to send you a settlement document for signature soon.

Sincerely yours,



Catherine Garypie
Associated Regional Counsel

cc: C. Rojko, USDOJ